

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

United States Securities and Exchange
Commission,

Court File No. 4:15-cv-053

Plaintiff,

vs.

North Dakota Developments, LLC, Robert L.
Gavin, and Daniel Hogan,

Defendants,

**THIRD INTERIM FEE
APPLICATION FOR
PROFESSIONAL FEES AND
EXPENSES OF
RECEIVER GARY HANSEN**

and

North Dakota Developments Property
Management LLC, Great American Lodge
LLC, NDD Holdings 1 LLC, NDD Holdings
2 LLC, NDD Modular LLC, Augusta
Exploration, LLC, and Ames Engineering &
Development Services LLC,

Relief Defendants.

For his Third Interim Fee Application for Professional Fees and Expenses of Receiver Gary Hansen (“Application”), Receiver Gary Hansen (the “Receiver”) states:

A. Information about the Applicant and the Application

The Receiver was appointed on May 18, 2015 pursuant to the Court’s Order Granting Plaintiff’s Motion for Preliminary Injunction and Appointment of Receiver, Asset Freeze, and other Equitable Relief [Dkt. No. 20] (“Receiver Order”). This Third Interim Fee Application covers services provided by the Receiver and his law firm Fox Rothschild LLP (“Fox Rothschild”), from February 1, 2018 through January 31, 2019.

Pursuant to the Receiver's agreement with the United States Securities and Exchange Commission ("SEC"), the Receiver reduced his hourly rate for this matter to \$525. All other rates were reduced by ten percent, with a cap of \$525. Below is a list of the names and hourly rates of all professionals and paraprofessionals at Fox Rothschild who have provided services to the Receivership during this billing time period.

<u>Timekeeper</u>	<u>2018 Rate</u>	<u>2019 Rate</u>
Gary Hansen	\$525.00	\$525.00
Phillip Martin	\$472.50	\$495.00
Ranelle Leier	\$445.50	\$468.00
Martin Culhane	\$571.50	
Matthew Lasley	\$369.00	
Thomas Moran	\$288.00	
Samuel Tunheim	\$288.00	
Maliya Rattliffe	\$265.50	
Stephen Overby	\$180.00	

B. Status Update

Since his appointment, the Receiver has extensively investigated the available assets of the receivership entities. The identified assets are far less than the approximately \$60 million contributed by investors. The Receiver has also spent significant time communicating with creditors of North Dakota Developments, LLC ("NDD") and the other receivership entities, as well as the defrauded investors in NDD. Although the Receiver was able to negotiate settlements with certain creditors resulting in additional moneys being brought into the receivership, most of these efforts did not necessarily generate funds for the receivership.

Nonetheless, the Receiver viewed his communications with creditors and investors as important services to be provided as part of the receivership.

Since the last status update, the Receiver closed on the sale of the mobile housing units and the real property located at the proposed Great American Lodge – Culbertson site in Culbertson, Montana, in accordance with the Court’s order authorizing and confirming the sale. [Dkt. No. 156.] At closing, the Receiver received net proceeds of approximately \$275,000.

As detailed in the Receiver’s initial fee application, the Receiver previously sold the assets located on the Great American Lodge – Watford West property, with the purchase price being made in installment payments. The final installment was due in May 2018. Full payment of this final installment, totaling \$285,324.25 plus 6% interest, has not been made. Instead, the purchaser has made partial payments totaling \$225,000.00. The Receiver has had numerous conversation with the purchaser regarding the unpaid balance. The purchaser has agreed to pay the remaining balance in March 2019.

The Receiver continues to investigate additional sources of funds for the receivership. The Receiver is involved in one on-going piece of litigation. Prior to the establishment of the receivership, the septic system at the Great American Lodge – Watford West site failed. The Receiver retained North Dakota counsel to pursue claims against the contractors involved with construction of the septic system. The case is pending in McKenzie County, North Dakota. Under the case scheduling order, the case was set for trial on that court’s first available trial setting after July 16, 2019. Because of the court’s docket, the court’s clerk has informed the parties that the first available trial setting is April 13-17, 2020 and that the case has been set for trial on these dates.

As of the date of this filing, the receivership has approximately \$1,684,000 in cash in its bank account. Since the second fee application, the Receiver received the following additional payments:

- \$274,859.54 from the sale of the Great American Lodge – Culbertson assets and real property;
- \$50,000 as partial payment of the final installment from the sale of the Watford West assets;
- \$50,000 as partial payment of the final installment from the sale of the Watford West assets;
- \$50,000 as partial payment of the final installment from the sale of the Watford West assets; and
- \$75,000 as partial payment of the final installment from the sale of the Watford West assets;

Since the second fee application, the Receiver has spent an additional approximately \$5,000.00 in administration of the receivership from the receivership account. The majority of these expenses are fees and expenses related to patrolling and upkeep at the Culbertson site. Because the sale of the Culbertson site closed in April 2018, the Receiver does not expect to incur significant additional administrative expenses.

The Receiver continues to compile creditor claims against the receivership entities. Exclusive of investor claims, the Receiver is currently aware of creditor claims totaling in excess of \$2 million. To date, the Receiver has not paid any creditor claims. Instead, once the receivership assets are liquidated, the Receiver will propose a distribution plan to the Court, which will include a process for notice to all known and unknown claimants and an opportunity for such claimants to be heard.

C. Current Fees and Expenses

This is the Receiver's Third fee application. The Receiver is requesting approval from the Court for the payment of attorney's fees in the amount of \$72,417.45 and expenses in the amount of \$525.49 for the time period February 1, 2018 through January 31, 2019. Prior to the

submission of the Application to the Court, the Receiver provided a copy of the Receiver's invoice to the SEC for its review and comment. The Receiver is also submitting the Receiver's invoice to the Court for *in camera* review.

The chart below sets forth the billing professional or paraprofessional, the total hours billed by each person, and the total amount of billing for each person during the February 1, 2018 through January 31, 2019 time period.

<u>Timekeeper</u>	<u>Total Hours</u>	<u>Total Billing</u>
Gary Hansen	20.80	\$10,920.00
Phillip Martin	1.00	481.50
Ranelle Leier	118.70	\$54,012.60
Matthew Lasley	5.70	\$2,103.30
Samuel Tunheim	12.10	\$3,484.80
Thomas Moran	.60	\$172.80
Martin Culhane	.50	\$285.75
Stephen Overby	.30	\$54.00
Maliya Rattliffe	3.4	\$902.70
TOTAL	163.10	\$72,417.45

The expenses for which the Receiver seeks reimbursement are summarized in the chart below.

<u>Expenses – 2/1/2018 – 1/31/2019</u>	
<u>Category</u>	<u>Amount</u>
State Filing Fees	\$100.00
Registered Agent Annual Fee	\$189.00
Messenger/Overnight delivery	\$206.49
Certified Copy fees	\$30.00
TOTAL	\$525.49

The Receiver's invoice provides detailed time entries describing the work performed by each timekeeper and includes additional details regarding the expenses for which the Receiver seeks reimbursement. In support of this Application, the Receiver has also submitted a

Certification indicating *inter alia* that all of the fees and expenses for which he is seeking reimbursement are true and accurate and that such fees are reasonable, necessary and commensurate with the skill and experience required for the activity performed.

Pursuant to the Billing Instructions provided to the Receiver by the SEC, the Receiver acknowledges that, to the extent requested by the SEC, this Application may be subject to a 20% holdback of the requested fees and expenses, and that the total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership. If the SEC make such a request, the Receiver does not object to this request. If the Court orders that any of the requested fees and expenses be held back, such funds will be held by the Receiver in a segregated account, payment of which will be considered by the Court with the Receiver's final fee application.

Therefore, the Receiver respectfully requests the Court to authorize payment to the Receiver in amount of \$72,942.94.

Dated: March 5, 2019

FOX ROTHSCHILD LLP

By: s/ Ranelle Leier
Gary Hansen (MN #40617) admitted *pro hac vice*
Ranelle Leier (MN #277587) admitted *pro hac vice*

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**RECEIVER AND ATTORNEY FOR RECEIVER FOR
DEFENDANT NORTH DAKOTA DEVELOPMENTS,
LLC AND RELIEF DEFENDANTS**